

STATE OF RHODE ISLAND
DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2025-05

**STATE OF RHODE ISLAND
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908**

IN THE MATTER OF: :
: **SC 24-039; -041; 23-T-052**
: **cigarette tax and other tobacco products**
:
Taxpayer. :
:

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to an Order to Show Cause, Notice of Pre-Hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued on December 23, 2024 to the above-captioned taxpayer (“Taxpayer”) by the Division of Taxation (“Division”) in response to a request for hearing. A hearing was held on January 22, 2025. The Division was represented by counsel, and the Taxpayer was *pro se*. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the 280-RICR-20-00-2 *Administrative Hearing Procedures* (“Hearing Regulation”).

III. ISSUE

Whether the Taxpayer owes the 2024 assessments.

IV. MATERIAL FACTS

(“Investigator”), Tax Investigator, testified on behalf of the Division. He testified that he conducted an inspection of the Taxpayer on August 23, 2024. He testified that (“Prior Business”) had previously been located at the Taxpayer’s location, and he had conducted an inspection of the Prior Business a few weeks prior to the Taxpayer’s inspection and seized untaxed tobacco products from the Prior Business at the time of that inspection.

The Investigator testified that on August 1, 2024, he received a business application registration (“BAR”) application from the Taxpayer for a cigarette dealer’s license and permit to make sales at retail. Division’s Exhibit Three (3) (Taxpayer’s BAR application dated July 31, 2024). He testified the next day he sent to a request for information to the Taxpayer in relation to it BAR application. He testified he sent the request for information to the Taxpayer’s business address listed on the BAR application. Division’s Exhibit Four (4) (August 2, 2024 request for information). He testified he called the Taxpayer’s owner (“Owner”) on August 22, 2024 about the request for information as there had been no response. He testified that he told the Owner that he had not received the information requested, and the Owner told him that the Taxpayer was purchasing the business, the Prior Business had moved out, and the location was now vacant. He testified he told the Owner that he could not operate without the applied for licenses.

The Investigator testified that the next day, August 23, 2024, he was out on inspections and drove by the Taxpayer’s premises at about 10:00 a.m., and he noticed there was sign that said “open” and two (2) people came out of the store having purchased vape products so he and another inspector went to the Taxpayer’s for an inspection. He testified the store had a large quantity of tobacco of the amount and kind that the Prior Business never carried. He testified the clerk (“Clerk”) on duty told them his name and that he worked for the Taxpayer, and the store had been

open for about one (1) week. He testified the Clerk told him he was from Pennsylvania and was sleeping in the store's backroom.

The Investigator testified that several of the tobacco products for sale were not from Rhode Island distributors and some of them were illegal to sell in Rhode Island. He testified the Clerk told him the products were from New York. He testified that when he asked the Clerk about invoices, the Clerk said he had no invoices. He testified he told the Clerk the store was selling illegal products without tax stamps and the store did not have a dealer's license or a sales permit so could not be selling tobacco products. He testified the Prior Business' dealer's license and retail permit were still on the wall. He testified that he told the Clerk the Taxpayer could not make sales using the Prior Business' permit and license. He testified the request for information that he had sent to the Taxpayer's business address was on the Taxpayer's store counter.

The Investigator testified the rolling papers were not from a Rhode Island distributor because they had no tax stamps, and the nontobacco wraps were not allowed to be sold in Rhode Island. He testified that he had to call other inspectors to help with the seizure because there was so much product to seize. He testified that he and the other inspectors prepared the seizure reports. He testified that Division's Exhibit 11 is the seizure report for the products that required tax stamps and Division's Exhibit 17 is the seizure report for products that did not require tax stamps. He testified he told the Clerk that the Taxpayer had five (5) days to come in with invoices, but the Taxpayer did not provide any invoices.

On cross-examination, the Investigator testified the inspection of the Prior Business was conducted in June, 2024. He testified that he does not know if the Owner called the Division before August 23, 2024 but that he, the Investigator, called him on August 22, 2024 because an applicant has 30 days to provide information so as the deadline was coming up soon, he called the Owner as

a courtesy. He testified the Prior Business had a few tobacco products and one box of rolling papers, and at the time of the August 23, 2024 inspection, the store had much more tobacco products than previously. He testified the day before the inspection, he had been told by the Owner the Prior Business had moved out and the premises were vacant. He testified that he did not send the request for information to the Taxpayer by certified mail.

On redirect examination, the Investigator testified that he usually sends a request for information to the home address especially when the applicant is out of state like the Owner but he cannot remember if he did so for this Taxpayer.

(“Auditor”), Principal Tax Auditor, testified on behalf of the Division. He testified he is familiar with the Taxpayer, and this was its first offense. He testified the Owner signed the BAR application and the Taxpayer’s articles of incorporation. Division’s One (Secretary of State’s Taxpayer records). He testified the Taxpayer’s asset purchase agreement was provided by the Taxpayer to the Division sometime in mid-September, 2024. Division’s Exhibit Five (5). He testified that an asset agreement is requested as part of a BAR application because the Division needs to review the sale and see what is being transferred including whether tobacco is being purchased, and if so, to confirm the tax is paid on the inventory being sold from a store. He testified the Taxpayer’s lease for its premises was provided to the Division. Division’s Exhibit Six (6) (lease). He testified the lease was to commence on August 1, 2024. He testified that a lease is required to be submitted as part of a BAR application. He testified the Prior Business obtained a letter in good standing on September 17, 2024. Division’s Exhibit Seven (7). He testified no license suspension was requested because the Taxpayer never received a cigarette dealer’s license.

The Auditor testified separate notices of assessment were sent for the seized cigarettes and seized other tobacco products (“OTP”) and that for both assessments, the statutory tax was

calculated, and penalties assessed. He testified that penalty (a) was calculated using a factor of eight (8) with five (5) being for the first offense and three (3) aggravating factors of no dealer's license, no permit to make sales, and no invoices. He testified that penalty (b) was calculated using a factor of one (1) for the first offense. Division's Exhibit Eight (8) (cigarette notice of assessment) and 14 (OTP assessment). He testified that interest has started to accumulate because of nonpayment of the assessments.

On cross-examination, the Auditor testified that when he was told about the seizure on August 23, 2024, he looked up the Prior Business in the Division's computer records and determined that it was no longer operating at the time of the inspection.

The Owner testified on the Taxpayer's behalf. He testified that he did not receive the request for information, and he made multiple calls to the Division and did not get any responses. He testified that he does not reside in Rhode Island, and he never received an email from the Division until August 26, 2024. Taxpayer's Exhibit One (1) (emails between Owner and Division). He testified the Prior Business should have been assessed. He testified the Division just sent him the assessments because he filed the BAR application and there was a clerk on location but there is no other evidence linking the Taxpayer to the operating the business. He testified that he provided the lease and asset agreement after the seizure so that the Division caused him to close. Taxpayer's Two (2) (summary of argument).

On cross-examination, the Owner testified that multiple calls were made by him and his accountant to the Division and he was not able to get into any touch with anyone. He testified that he spoke to the Prior Business's owner about opening the business but did not talk to the Division. He testified that he did not talk to the Investigator on August 22, 2024. He testified that his accountant emailed him, the Owner, about the accountant's attempts to contact the Division. He

testified the accountant told him he called the Division on August 7, 2024 and did not speak to anyone and then on August 12, 2024, the accountant said he left a message for the Investigator. The Owner testified that the accountant said in his email to him that on August 19, 2024, the Investigator returned his call and told the accountant about the request for information which the Division had not received so he asked for it to be sent again. He testified that the lease states that the lease is effective and commences on August 1, 2024.

The Investigator was recalled and testified that he did not receive a telephone call from the Owner or anyone else for the Taxpayer. He testified that he called and spoke to the Owner who identified himself as the Owner.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

R.I. Gen. Laws § 44-20-12¹ imposes a tax on cigarettes sold and R.I. Gen. Law § 44-20-13.2² imposes tax on other tobacco products. Inspections of cigarette dealers are allowed by R.I. Gen. Laws § 44-20-40.1. R.I. Gen. Laws § 44-20-51.1³ provides for administrative penalties for the violation of the tax laws.

¹ R.I. Gen. Laws § 44-20-12 provides as follows:

Tax imposed on cigarettes sold. A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the rate of two hundred twelve and one-half (212.5) mills for each cigarette.

² R.I. Gen. Laws § 44-20-13.2 provides in part as follows:

Tax imposed on other tobacco products, smokeless tobacco, cigars, and pipe tobacco products. (a) A tax is imposed on all other tobacco products, smokeless tobacco, cigars, and pipe tobacco products sold, or held for sale in the state by any person, the payment of the tax to be accomplished according to a mechanism established by the administrator, division of taxation, department of revenue. The tax imposed by this section shall be as follows:

(1) At the rate of eighty percent (80%) of the wholesale cost of other tobacco products, cigars, pipe tobacco products, and smokeless tobacco other than snuff.

(2) Notwithstanding the eighty percent (80%) rate in subsection (a) above, in the case of cigars, the tax shall not exceed fifty cents (\$.50) for each cigar.

(b) Any dealer having in his or her possession any other tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the other tobacco products in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

³ R.I. Gen. Laws § 44-20-51.1 provides as follows:

Civil penalties. (a) Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be liable as follows:

(1) For a first offense in a twenty-four-month (24) period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved; and

(2) For a second or subsequent offense in a twenty-four-month (24) period, a penalty of not more than twenty-five (25) times the retail value of the cigarettes and/or other tobacco products involved.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this chapter, be liable for a penalty of one thousand dollars (\$1,000) or not more than five (5) times the tax due but unpaid, whichever is greater.

(c) When determining the amount of a penalty sought or imposed under this section, evidence of mitigating or aggravating factors, including history, severity, and intent, shall be considered.

C. Arguments

The Division argued that on the day of the inspection, the Taxpayer was open for business selling tobacco and OTP without a permit and a dealer's license, and the assessments should be upheld.

The Taxpayer argued it had applied for the cigarette dealer's license and sales permit and were waiting for them and had not heard about them so the assessments should go to the Prior Business. In its written argument, the Taxpayer argued that there was nothing on the premises that noted it had an active business at the premises but rather the signage was all for the Prior Business.

D. Whether the Taxpayer Owes the Tax Assessments on Seized Products

The Taxpayer argued the assessments should have gone to the Prior Business. However, the Auditor testified the Prior Business had ceased operating at that location. The Investigator testified the type of tobacco being sold during the August 23, 2024 inspection was not type sold by the Prior Business, and the Owner had told him that the premises were vacant. Some of the tobacco products were also of the type not allowed to be sold in Rhode Island which indicated that the new owner (out of state) might have brought in non-Rhode Island products.

In addition, the Investigator spoke to the Clerk who said he worked for the Taxpayer. If the Clerk was working for the Prior Business, he would not necessarily say he was working for the new owner or even know who the new owner was. The Clerk stated the store has been opened for a week so that the store opened a couple of weeks after the lease started.

The testimony about what the Clerk and the Owner said is supported by the lease. The lease is between the landlord of the premises and the Taxpayer. The lease commenced on August 1, 2024 with rental payments to commence on that date as well. The lease states the premises are to be delivered with the mechanical and electrical and plumbing in good working order and "broom

clean.” The leased premises are defined by address and a diagram of the leased premises. The tenant is defined as the Owner. The landlord would not be leasing property with the delivery condition to be broom clean if another tenant was still there. Indeed, the landlord would be in breach of the lease if it was not providing the premises broom clean by August 1, 2024. Based on the lease, the Taxpayer leased the property starting August 1, 2024 since the Prior Business had vacated the premises.

The Taxpayer’s arguments are also contradicted by an email the Owner sent to the Division on September 16, 2024 in which he stated, “on 8/23/24 the tobacco got seizures (sic) was the merchandise we have purchased while buying the business.” Taxpayer’s Exhibit One (1). The Prior Business’ dealer’s license and sales permit might still have been on the premise’s wall on August 23, 2024 but that does not mean the Prior Business was still operating the business. The Taxpayer purchased the tobacco from the Prior Business as part of the sale of the business.

The Taxpayer purchased the Prior Business’ assets. The asset agreement is undated and does not list tobacco. However, the Owner’s email to the Division stated the Taxpayer purchased the Prior Business’ tobacco merchandise and that was what was seized by the Division. In other words, the Taxpayer bought tobacco from the Prior Business and was selling it (and other tobacco products) when the products were seized because the Taxpayer was operating the business. The Taxpayer was aware that it needed a sales permit and cigarette dealer’s license as it filed the BAR application and indeed the Owner testified that they kept calling the Division about said application. The Owner testified that his accountant found out on August 19, 2024 that more information was needed to process the application. The Division’s testimony was the conversation was the day before the inspection. Nonetheless, someone - whether the Owner or the accountant

- spoke to the Division prior to the inspection and found out that no license or permit had been issued because more information was needed.

Based on the testimony and exhibits, the Taxpayer took possession of the premises on August 1, 2024 and was operating the store without obtaining a sales permit or dealer's license when the tobacco products were seized. The fact the Prior Business' permit and dealer's license were still on the wall does not mean the Prior Business was operating the store as the Taxpayer was already renting the premises and operating the store.

The testimony was the applicable statutory tax for OTP and cigarettes was applied to the seized OTP and cigarette products. The Taxpayer did not challenge the calculation of the taxes owed. The Taxpayer did not provide any evidence that it paid tax on any of the seized tobacco products. Thus, the Taxpayer owes the applicable tobacco taxes for the seized tobacco products.

E. What Sanctions Should be Imposed for the Various Seizures

1. Penalties (a) and (b)

R.I. Gen. Laws § 44-20-51.1(a) provides that for a first offense in a 24 month period, a penalty of not more than ten (10) times the retail value of the cigarettes and/or other tobacco products involved "shall" be imposed. R.I. Gen. Laws § 44-20-51.1(b) provides that a penalty of not more than five (5) times the tax due or \$1,000 whichever is greater shall be imposed. R.I. Gen. Laws § 44-20-51.1(c) provides that when determining the penalty to be imposed, mitigating and aggravating factors such as history, severity, and intent shall be considered when imposing penalties (a) and (b). The Division seeks monetary penalties for the seized OTP and cigarettes pursuant to R.I. Gen. Laws § 44-20-51.1(a) and (b).

The Division seeks monetary penalties for the nonpayment of tax on the seized cigarettes pursuant to R.I. Gen. Laws § 44-20-51.1. The testimony was that penalty (a) used a factor of eight

(8) times the retail value representing a factor of five (5) for a first offense and a factor of three (3) for the aggravating factors of no invoices, no permit, and no license at the time of inspection. The testimony was that penalty (b) was calculated as a factor of one (1) of the tax owed as the greater amount as provided by statute.

The penalties imposed are in line with the statutory penalties for a first offense for penalty (a) in the last 24 months and for penalty (b). As a consequence, the Taxpayer's violations justified the penalties imposed in the Division's notice of assessments for the seized cigarettes and OTP.

The imposition of interest after the nonpayment of a deficiency by its due date is authorized by R.I. Gen. Laws § 44-1-7.⁴

VI. FINDINGS OF FACT

1. Cigarettes for which no tax was paid and OTP for which no tax was paid were seized by the Division from the Taxpayer on August 23, 2024.
2. An Order to Show Cause was issued on December 23, 2024.
3. A hearing on this matter was held on January 22, 2025. The parties rested on the record.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-20-1 *et seq.*, and the Hearing Regulation.

⁴ R.I. Gen. Laws § 44-1-7 provides in part as follows:

Interest on delinquent payments. (a) Whenever the full amount of any state tax or any portion or deficiency, as finally determined by the tax administrator, has not been paid on the date when it is due and payable, whether the time has been extended or not, there shall be added as part of the tax or portion or deficiency interest at the rate as determined in accordance with subsection (b) of this section, notwithstanding any general or specific statute to the contrary.

2. The Taxpayer violated R.I. Gen. Laws § 44-20-12 and R.I. Gen. Laws § 44-20-13.2 on August 23, 2024.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-20-1 *et seq.*, R.I. Gen. Laws § 44-20-12, R.I. Gen. Laws § 44-20-13.2, and R.I. Gen. Laws § 44-20-51.1, the Taxpayer owes the tax and penalties assessed by the Division as set forth in the notices of assessment contained in Division's Exhibits Eight (8) and 14. Additionally, the Taxpayer owes any accrued interest pursuant to R.I. Gen. Laws § 44-1-7. Payment shall be made by the 31st day from the date of execution of this decision.

Date: February 13, 2025



Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 2/12/25


Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

R.I. Gen. Laws § 44-20-48 Appeal to district court.

Any person aggrieved by any decision of the tax administrator under the provisions of this chapter may appeal the decision within thirty (30) days thereafter to the sixth (6th) division of the district court. The appellant shall at the time of taking an appeal file with the court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. These appeals are preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. The court may grant relief as may be equitable. If the court determines that the appeal was taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all those appeals, which may be denied, costs may be taxed against the appellant at the discretion of the court. In no case shall costs be taxed against the state, its officers, or agents. A party aggrieved by a final order of the court may seek review of the order in the supreme court by writ of certiorari in accordance with the procedures contained in § 42-35-16.

CERTIFICATION

I hereby certify that on the 13th day of February, 2025 a copy of the above Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by certified mail, return receipt requested and electronic delivery to the Taxpayer's address on record with the Division and by electronic delivery to John Beretta, Esquire, Department of Revenue, Division of Taxation, One Capitol Hill, Providence, RI 02908.

